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Offered: 4/22/86
Referred: Community & Regional
Affairs

Original sponsor: Marrou

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR HOUSE BILL NO. 428 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to controlled livestock districts."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
8 * Section 1. AS 03.35.010 is amended to read:
9 Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED
10 LIVESTOCK DISTRICTS. Except as provided in (b) of this section, a
11 borough assembly [A DISTRICT JUDGE] may by ordinance create and estab-
12 lish a controlled livestock district within the [A CITY OR ORGANIZED]
13 borough [,OR IN OTHER SETTLED AREAS OF THE STATE,] as provided in this
14 chapter, to consist of [ONE OR MORE TOWNSHIPS OR PORTIONS THEREOF OR
15 OF] a contiguous area of not less than 1,280 acres. It is unlawful
16 for any domestic animal to graze or run at large within a controlled
17 livestock district unless the domestic animal is [HERDED ON OPEN
18 PUBLIC DOMAIN AND] tended by a person and prevented from grazing or
19 running upon private roads or highways and privately owned land.
20 * Sec. 2. AS 03.35.010 is amended by adding a new subsection to read:
21 (b) Each city of any class constitutes a controlled livestock
22 district. The area of a former city of any class within a municipa-
23 lity unified under AS 29.68.240 - 29.68.440 constitutes a controlled
24 livestock district. The area of the state that is not within a con-
25 trolled livestock district constitutes open public domain.
26 * Sec. 3. AS 03.35.020(a) is amended to read:
27 Sec. 03.35.020. PETITION TO CREATE, ADD, OR ABOLISH. (a) A
28 controlled livestock district may be created upon petition of not
29 fewer [LESS] than 10 [60 PER CENT OF THE] resident owners or [AND]

1 lessees of cultivated or improved land within the area to be included
2 in the district. The petition shall contain a statement of its pur-
3 pose, shall define the boundaries of the area to be included within
4 the district, shall be signed by the 10 [REQUISITE 60 PER CENT OF THE]
5 resident owners or [AND] lessees within the area described, and shall
6 be filed with the borough clerk [DISTRICT JUDGE] for the borough
7 [DISTRICT] within which the land is situated.

8 * Sec. 4. AS 03.35.020(c) is amended to read:

9 (c) Portions of a district or an entire district may be abol-
10 ished or eliminated if 10 [60 PERCENT OF THE] owners or [AND] lessees
11 of cultivated or improved land within the district or the area affect-
12 ed petition for the abolishment, in which event the procedure set out
13 in this section for formation of a controlled livestock district shall
14 be followed for dissolution.

15 * Sec. 5. AS 03.35.030 is amended to read:

16 Sec. 03.35.030. NOTICE, HEARING, AND ORDINANCE [ORDER]. (a)
17 Upon receipt of a petition for the establishment of a controlled
18 livestock district, the borough assembly [DISTRICT JUDGE] shall set a
19 time for hearing the petition not less than 30 days after the receipt
20 of the petition [THEREAFTER]. Notice of the time and place of the
21 hearing and its purpose shall be posted in not less than three con-
22 spicuous public places within the proposed district, including a post
23 office, for a period of at least 30 days before the hearing. If there
24 is no post office within the proposed district, then the notice shall
25 be posted in two conspicuous public places in the proposed district
26 and in the post office nearest the proposed district.

27 (b) If, at the hearing, the borough assembly [DISTRICT JUDGE]
28 finds that the petition is sufficient and that notice of the hearing
29 has been given, it may adopt an ordinance [THE DISTRICT JUDGE SHALL

1 ENTER AN ORDER] creating and establishing the controlled livestock
2 district and describing its boundaries. The borough clerk [DISTRICT
3 JUDGE SHALL CERTIFY TO THE CLERK OF THE SUPERIOR COURT FOR THE JUDI-
4 CIAL DISTRICT A COPY OF THE FINDINGS AND ORDER. THE DISTRICT JUDGE]
5 shall send a copy of the ordinance [ORDER] to the commissioner of
6 natural resources [DIRECTOR, DIVISION OF AGRICULTURE, DEPARTMENT OF
7 NATURAL RESOURCES].

8 * Sec. 6. AS 03.35.040. is amended to read:

9 Sec. 03.35.040. LIABILITY FOR DAMAGES, AND LIEN. (a) The owner
10 of land within a controlled livestock district, whether the land is
11 fenced or unfenced,

12 (1) is entitled to recover, from the owner or person having
13 custody and control of a domestic animal, for actual damages or in-
14 juries [ANY INJURY] done or caused by the domestic animal [IT] when
15 grazing or running at large within a controlled livestock district
16 contrary to the provisions of this chapter, and

17 (2) has a lien upon the domestic animal for the amount of
18 the damage done.

19 (b) A [HOWEVER, NO] claim for damages in excess of \$5,000 [\$50]
20 is not allowed against any one animal for any one trespass.

21 * Sec. 7. AS 03.35.070 is amended to read:

22 Sec. 03.35.070. DEFINITIONS. In [AS USED IN] this chapter

23 (1) "domestic animal" includes goats, sheep, cattle, hors-
24 es, and swine;

25 (2) "owner of land" means a [INCLUDES A FREEHOLDER, TENA-
26 CONTRACT VENDEE OR OTHER] person in actual possession of land.

Introduced: 5/8/85
Referred: Community & Regional
Affairs and Resources

1 IN THE HOUSE

BY MARROU

2

HOUSE BILL NO. 428

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to grazing districts."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 03.35.010 is amended to read:

9 Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED
10 LIVESTOCK DISTRICTS. A district judge may create and establish a
11 controlled livestock district within an [A CITY OR] organized borough
12 [,] or [IN] other settled area [AREAS] of the state, as provided in
13 this chapter, to consist of one or more townships or portions of a
14 township [THEREOF] or of a contiguous area of not less than 1,280
15 acres. It is unlawful for any domestic animal to graze or run at
16 large within a city or controlled livestock district unless the domes-
17 tic animal is [HERDED ON OPEN PUBLIC DOMAIN AND] tended by a person
18 and prevented from grazing upon private roads or highways and pri-
19 vately owned land.

20 * Sec. 2. AS 03.35.010 is amended by adding a new subsection to read:

21 (b) Each city of any class constitutes a controlled livestock
22 district. The area of a former city of any class within a municipal-
23 ity unified under AS 29.68.240 - 29.68.440 constitutes a controlled
24 livestock district. The area of the state that is not within a con-
25 trolled livestock district constitutes open public domain.

26 * Sec. 3. AS 03.35.020(a) is amended to read:

27 (a) A controlled livestock district may be created upon petition
28 of not less than 60 percent of the resident owners and lessees of
29 cultivated or improved land within the area to be included in the

1 district. The petition shall contain a statement of its purpose,
2 shall define the boundaries of the area to be included within the
3 district, shall be signed by the requisite 60 percent of the resident
4 owners and lessees within the area described, and shall be filed with
5 the district judge for the district within which the land is situated.

6 * Sec. 4. AS 03.35.020(c) is amended to read:

7 (c) Portions of a district or an entire district may be abol-
8 ished or eliminated if 60 percent of the owners and lessees of cul-
9 tivated or improved land within the district or the area affected
10 petition for the abolishment, in which event the procedure set out in
11 (a) of this section for formation of a controlled livestock district
12 shall be followed for dissolution.

SECTIONAL ANALYSIS HB 428

Section 1 of the bill (copy enclosed) bars a city from having a livestock district within its boundaries. Also, it adds the areas of cities to controlled livestock districts as places where animals must be "tended by a person and prevented from grazing upon... privately owned land".

Section 2 states that every city and unified municipality constitutes a controlled livestock district. This extends considerably the area where people are required to tend their livestock.

Section 3 adds improved land to cultivated land, "the resident owners and lessees" of which can vote to form a livestock district. This increases the number of eligible people, and could simplify a formation of a district by allowing house (or cabin) owners to vote as well as the farmers and ranchers.

Section 4 is the opposite of Section 3 and allows the abolition or elimination of a livestock district, as Section 3 allows it to be created.

Further Possible Compromises

(A)

Allow open range in certain well established areas (such as the Fox River Valley), but require livestock owners to control their animals within, say, one-quarter mile of State roads.

(B)

If a person does not have a State grazing lease, perhaps he/she should not be allowed to utilize open range.

(C)

Allow ranchers to buy the grazing leases that they've been using for decades, and then require them to fence it in. This was part of the reasoning behind HB 248 last year regarding University-grant land--allow the farmer/rancher to own the land.

STATE OF ALASKA
THE LEGISLATURE

APR 02 1985

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 2, 1985

SUBJECT: Open range (Work Order No. 14-0972)
TO: Representative Andre Marrou
FROM: Richard A. Bradley
Legislative Counsel *B*

You have requested an "overview" of the law relating to the responsibilities of owners of cattle.

I gather that there have been at least two cases, both arising in the jurisdiction of the Homer District Court, that have been concerned with these issues. The cases are the C'Meara v. Anderson case that you provided me the pleadings on and In re New Way Agriculture Cooperative, (3HO 83-264 CIV). My information does not suggest which way the latter case was decided since all that I have is the Brief of the state opposing the creation of a controlled livestock district on the real property described in the petition. The decision in the New Way Agriculture Cooperative case is not indicated but the state opposed the establishment of the controlled livestock district because of technical problems in the petition.

Judge Fuld's decision may or may not become a significant precedent for the future. But I have some difficulties with the decision.

He concludes that Alaska law, like the English common law, should "protect the interests of private property over that of the cattle owner." He is unable to distinguish between trespassing cattle and trespassing oil company equipment or trespassing hunters.

He arrives at this conclusion from an essentially pure common law approach, that is, he finds the law under AS 03.30 confused and unhelpful and legislative intent uncertain; he seems unaware of AS 03.35 (or fails to note its existence)

Representative Andre Marrou
April 4, 1985
page 2

and thus he is forced to find a solution in the uncodified, common law.

I think it is fair to state that the law is in a state of disrepair.

Two separate chapters of the law have dealt with the regulation of cattle in this context. See former AS 03.30 ("Fences") and present AS 03.35 ("Grazing Districts"). Both are derived from the compilation of the laws in 1949 (ACLA 1949) though I have not sought to determine which is the more venerable; each is (or was) in its way equally venerable.

The provisions of former AS 03.30 adopted the "fence-out" concept; before that law was largely repealed in 1977 (ch. 55, SLA 1977), it protected the property owner who fenced his property and kept the fence in repair according to statutorily established standards (found in former AS 03.30.010). In such a case, the owner of trespassing cattle was liable for resulting damages if the cattle were to breach the fence. Viewing AS 03.30 as the exclusive law on the subject, the area fenced under former AS 03.30 would therefore have ceased to be open public domain land and been excluded from the application of the so-called Western common law rule.

The difficulty is that there is other law.

The provisions of AS 03.35 permit the establishment of "controlled livestock districts." In my view, a slightly (well, thoroughly) confused statement in AS 03.35.010 may reflect the intention of the legislature:

Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED LIVESTOCK DISTRICTS. * * * It is unlawful for any domestic animal to graze or run at large within a controlled livestock district unless the domestic animal is herded on open public domain and tended by a person and prevented from grazing upon private roads or highways and privately owned land.

If I were to recast the quoted language into clearer prose, I would delete the phrase "herded upon open public domain and"; it would then read:

Representative Andre Marrou
April 4, 1985
page 3

It is unlawful for any domestic animal to graze or run at large within a controlled livestock district unless the domestic animal is tended by a person and prevented from grazing upon private roads or highways and privately owned land.

The result in this situation is not different from the situation under AS 03.30 before its amendment in 1977.

I note that Governor Hammond expressed concern in 1977 when the fence-out laws were repealed. See 1977 House Journal at 1484. No useful legislative history (beyond the governor's letter) appears to remain to indicate what was intended. Note, however, that while the amendment to AS 03.30 deleted the option of the individual to erect a fence, AS 03.35 continues to permit the establishment of a controlled livestock area by judicial decree.

In the area outside the controlled livestock area, open range conditions exist. And, under AS 03.30 as it existed before the 1977 amendment, the area outside fences is an area of the "open public domain."

And while there are some suggestions about the status of the "common law" in Alaska at this time (including the decision of Judge Fuld in O'Meara), I believe that that suggestion is not altogether accurate. AS 03.35 has supplanted the "common law" by its enactment of a statutory framework that explicitly recognizes open range conditions except when a controlled livestock district has been established.

The statutory law in the state does not, however, have a fence-out aspect. In my view, that fact has no implications for the common law and does not revive the common law.

Therefore, in my opinion, the law in Alaska is generally that the entire state is open range except to the extent that controlled livestock districts have been established under AS 03.35. There are clear problems with this result in urban areas but the law permits the establishment of controlled livestock districts in these circumstances. Note, moreover, that the legislature apparently intended the controlled livestock district to be the answer in urban areas since it is in these areas that AS 03.35.010 suggests that the districts be established. It is under this situation that I have reservations about the decision suggesting that the English common law rule applies in urban areas.

Representative Andre Marrou
April 4, 1985
page 4

Having said that, I note an existing problem with AS 03.35 that may have been the basis for the state's opposition to the establishment of the controlled livestock district in the New Way Agriculture Cooperative case. The threshold requirement for the establishment of the district is that a certain number of the owners of "cultivated land" join in the petition. The term "cultivated" is not defined in AS 03.35; if it really has its usual meaning, it would not likely be useful in urban areas-- but I suspect that it should be read as "improved" (or as "cultivated or improved"). I confess that I am substantially rewriting the law as I say this and suggest that the legislature may wish to reconsider what was meant by the usage of the term.

And a general review of the law in both AS 03.30 and 03.35 is timely.

If I may be of further assistance, please advise.

RAB:csh
c3/081

Bradley
5/3/86 ✓

Original sponsor: Marrou

1 IN THE HOUSE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 428 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to open public range."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 03.35.010 is amended to read:

9 Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED
10 LIVESTOCK DISTRICTS. (a) The state constitutes a controlled live-
11 stock district. An area of open public range may be established under
12 this chapter

13 (1) in the areas outside a borough of the state; and

14 (2) in the areas outside a city or former city of any class
15 in a borough of the state.

16 (b) A district judge may create and establish open public range
17 in the area outside a borough of the state [A CONTROLLED LIVESTOCK
18 DISTRICT WITHIN A CITY OR ORGANIZED BOROUGH, OR IN OTHER SETTLED AREAS
19 OF THE STATE,] as provided in this chapter [, TO CONSIST OF ONE OR
20 MORE TOWNSHIPS OR PORTIONS THEREOF OR OF A CONTIGUOUS AREA OF NOT LESS
21 THAN 1,280 ACRES].

22 (c) A borough assembly may by ordinance establish open public
23 range in the areas outside a city or a former city of any class within
24 the borough as provided in this chapter.

25 (d) It is unlawful for any domestic animal to graze or run at
26 large within a controlled livestock district [UNLESS THE DOMESTIC
27 ANIMAL IS FED ON OPEN PUBLIC DOMAIN AND TENDED BY A PERSON AND
28 PREVENTED FROM GRAZING UPON PRIVATE ROADS OR HIGHWAYS AND PRIVATELY
29 OWNED LAND].

1 * Sec. 2. AS 03.35.020 is repealed and reenacted to read:

2 Sec. 03.35.020. PETITION TO CREATE, ADD, OR ABOLISH. (a) An
3 area of open public range may be established on the petition of not
4 less than 60 percent of the owners of land within the proposed open
5 range area outside a borough. The petition shall contain a statement
6 of its purpose, shall define the boundaries of the area, shall be
7 signed by 60 percent of the owners of land within the area described,
8 and shall be filed with the district judge for the area within which
9 the land is situated.

10 (b) An area of open public range may be established in an area
11 outside the area of a city or former city in a borough upon petition
12 of not fewer than 10 owners of land within the proposed open range
13 area. The petition shall contain a statement of its purpose, shall
14 define the boundaries of the area, shall be signed by 10 owners of
15 land within the area described, and shall be filed with the borough
16 assembly.

17 (c) An addition to an area of open public range may be made
18 under the procedures established under (a) and (b) of this section if
19 the addition is contiguous to an area of open public range.

20 (d) All or a portion of an area of open public range may be
21 returned to status as a controlled livestock district if the required
22 number of the owners of land within the area affected petition for the
23 change. If a petition is filed requesting a change, the procedure set
24 out in (a) and (b) of this section for formation of an area of open
25 public range shall be followed.

26 * Sec. 3. AS 03.35.030 is amended to read:

27 Sec. 03.35.030. NOTICE, HEARING, AND ORDER OR ORDINANCE. (a)
28 Upon receipt of a petition for the establishment of an area of open
29 public range in an area outside of a borough of the state [A

1 CONTROLLED LIVESTOCK DISTRICT], the district judge shall set a time
2 for hearing the petition not less than 30 days after the receipt of
3 the petition [THEREAFTER].

4 (b) Upon receipt of a petition for the establishment of an area
5 of open public range in an area within a borough of the state, the
6 borough assembly shall set a time for hearing the petition not less
7 than 30 days after the receipt of the petition.

8 (c) Notice of the time and place of the hearing and its purpose
9 shall be posted in not less than three conspicuous public places
10 within the proposed area [DISTRICT], including a post office, for a
11 period of at least 30 days before the hearing. If there is no post
12 office within the proposed area [DISTRICT], then the notice shall be
13 posted in two conspicuous public places in the proposed area [DIS-
14 TRICT] and in the post office nearest the proposed area [DISTRICT].

15 (d) If, at the hearing, the district judge finds that the peti-
16 tion is sufficient and that notice of the hearing has been given, the
17 district judge shall enter an order creating and establishing the area
18 of open public range [CONTROLLED LIVESTOCK DISTRICT] and describing
19 its boundaries. The district judge shall [CERTIFY TO THE CLERK OF THE
20 SUPERIOR COURT FOR THE JUDICIAL DISTRICT A COPY OF THE FINDINGS AND
21 ORDER. THE DISTRICT JUDGE SHALL] send a copy of the order to the
22 commissioner of natural resources [DIRECTOR, DIVISION OF AGRICULTURE,
23 DEPARTMENT OF NATURAL RESOURCES].

24 (e) If, at the hearing, the borough assembly finds that the
25 petition is sufficient and that notice of the hearing has been given,
26 it may adopt an ordinance creating and establishing the area of open
27 public range and describing its boundaries. The borough clerk shall
28 send a copy of the ordinance to the commissioner of natural resources.

29 * Sec. 4. AS 03.35.040 is amended to read:

1 Sec. 03.35.040. LIABILITY FOR DAMAGES, AND LIEN. (a) The owner
2 of land within a controlled livestock district, whether the land is
3 fenced or unfenced,

4 (1) is entitled to recover, from the owner or person having
5 custody and control of a domestic animal, for actual damages or in-
6 juries [ANY INJURY] done or caused by the domestic animal [IT] when
7 grazing or running at large within a controlled livestock district
8 contrary to the provisions of this chapter, and

9 (2) has a lien upon the domestic animal for the amount of
10 the damage done.

11 (b) A [HOWEVER, NO] claim for damages in excess of \$5,000 [\$50]
12 is not allowed against any one animal for any one trespass.

13 * Sec. 5. AS 03.35.070 is amended to read:

14 Sec. 03.35.070. DEFINITIONS. In [AS USED IN] this chapter

15 (1) "domestic animal" includes goats, sheep, cattle, hors-
16 es, and swine;

17 (2) "owner of land" means a [INCLUDES A FREEHOLDER, TENANT,
18 CONTRACT VENDEE OR OTHER] person in actual possession of land.
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Original sponsor: Marrou

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 428 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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11 borough assembly [A DISTRICT JUDGE] may by ordinance create and
12 establish a controlled livestock district within the [A CITY OR
13 ORGANIZED] borough [,OR IN OTHER SETTLED AREAS OF THE STATE,] as
14 provided in this chapter, to consist of [ONE OR MORE TOWNSHIPS OR
15 PORTIONS THEREOF OR OF] a contiguous area of not less than 1,280
16 acres. It is unlawful for any domestic animal to graze or run at
17 large within a controlled livestock district unless the domestic
18 animal is [HERDED ON OPEN PUBLIC DOMAIN AND] tended by a person and
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20 privately owned land.

21 * Sec. 2. AS 03.35.010 is amended by adding a new subsection to read:

22 (b) Each city of any class constitutes a controlled livestock
23 district. The area of a former city of any class within a
24 municipality unified under AS 29.68.240 - 29.68.440 constitutes a
25 controlled livestock district. The area of the state that is not
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2 lessees of cultivated or improved land within the area to be included
3 in the district. The petition shall contain a statement of its pur-
4 pose, shall define the boundaries of the area to be included within
5 the district, shall be signed by the 10 [REQUISITE 60 PER CENT OF THE]
6 resident owners or [AND] lessees within the area described, and shall
7 be filed with the borough clerk [DISTRICT JUDGE] for the borough
8 [DISTRICT] within which the land is situated.

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19 livestock district, the borough assembly [DISTRICT JUDGE] shall set a
20 time for hearing the petition not less than 30 days after the receipt
21 of the petition [THEREAFTER]. Notice of the time and place of the
22 hearing and its purpose shall be posted in not less than three con-
23 spicuous public places within the proposed district, including a post
24 office, for a period of at least 30 days before the hearing. If there
25 is no post office within the proposed district, then the notice shall
26 be posted in two conspicuous public places in the proposed district
27 and in the post office nearest the proposed district.

28 (b) If, at the hearing, the borough assembly [DISTRICT JUDGE]
29 finds that the petition is sufficient and that notice of the hearing

1 has been given, it may adopt an ordinance [THE DISTRICT JUDGE SHALL
2 ENTER AN ORDER] creating and establishing the controlled livestock
3 district and describing its boundaries. The borough clerk [DISTRICT
4 JUDGE SHALL CERTIFY TO THE CLERK OF THE SUPERIOR COURT FOR THE
5 JUDICIAL DISTRICT A COPY OF THE FINDINGS AND ORDER. THE DISTRICT
6 JUDGE] shall send a copy of the ordinance [ORDER] to the commissioner
7 of natural resources [DIRECTOR, DIVISION OF AGRICULTURE, DEPARTMENT OF
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26 (2) "owner of land" means a [INCLUDES A FREEHOLDER, TENANT,
27 CONTRACT VENDEE OR OTHER] person in actual possession of land.
28
29

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 428
 Title : Grazing Districts

 Sponsor : Rep. Marrou
 Requestor : House Resources
 Date of Request : 4/10/86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Agriculture Management

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|----------------|-----|-----|-----|-----|-----|-----|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|----------------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|----------------|-----|-----|-----|-----|-----|-----|
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |
|----------------|-----|-----|-----|-----|-----|-----|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | 0 | 0 | 0 | 0 |

POSITIONS :

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

Prepared by : Carol Wilson
 Division : Commissioner's Office

Phone : 465-2400
 Date : 4/10/86

Approved by Commissioner : Mrs. D. Arnold, Deputy
 Agency : Natural Resources

Date : 4/10/86

Dissemination (by Agency preparing fiscal note):

- Executive Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

May 25, 1977

"May 25, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

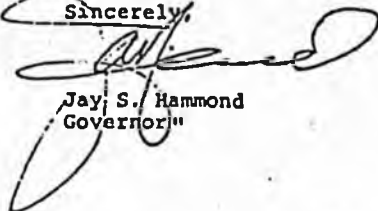
I am allowing to become law without my signature and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

SCS
CSHD
90

SENATE COMMITTEE SUBSTITUTE
COMMITTEE SUBSTITUTE
HOUSE BILL NO. 90
(Relating to domestic animals)
Chapter 55, SLA 1977

I am concerned about the final provision of the bill repealing certain provisions of the law relating to open range land, specifically, the section defining a legal fence and the section providing that an owner of an animal which enters upon land enclosed by a legal fence shall be liable to the landowner. By repealing these sections, substantial doubt and uncertainty is created concerning the rights of a person owning land in an open range district to protect himself from possible damage caused by another's domestic animals. The present statute clearly provides for liability; its repeal suggests that the owner of animals is no longer to be liable to the landowner. Yet, general principles of tort law, as well as common sense, suggest that a landowner, if he puts up a fence to keep animals off his property, should be entitled to damages if the animals knock down the fence and come upon his property. Repeal of the definition of a legal fence further complicates this issue and leaves in doubt the current law. I am hopeful that the legislature might clarify this next session.

Sincerely,


Jay S. Hammond
Governor"

Messages dated May 25, 1977 were read stating the Governor has signed the following bills and is transmitting the enrolled and engrossed copies to the Lieutenant Governor's office for permanent filing:

SB
197
am H

SENATE BILL NO. 197 amended House
(sale of subsistence salmon roe)
Chapter 56, SLA 1977

May 25, 1977

HOUSE JOURNAL

1485

HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 188
(membership on the Alaska Code Commission and
Criminal Law Revision Subcommittee)
Chapter 57, SLA 1977

HCS
SB
188

MESSAGES FROM THE SENATE

A message dated May 24, 1977 was read stating the Senate has passed the following and they are returned:

HOUSE CONCURRENT RESOLUTION NO. 65 amended HCR
(Requesting Governor to preserve the superintendent's 65
quarters at the Alaska Pioneers' Home in Sitka) am
COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 193 amended CSBH
(child care; effective date) 193
am

The above were referred to the Chief Clerk for enrollment.

A message dated May 24, 1977 was read stating the Senate HCS
has concurred in the House amendment to SENATE BILL NO. 50 SB
amended (utilities and state rights-of-way; effective 50
date), thus adopting (Fin)
am H

HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 50 (Finance) amended House
(utilities; effective date)

A message dated May 24, 1977 was read stating the Senate HCS
has failed to concur in the House amendment to COMMITTEE CSSB
SUBSTITUTE FOR SENATE BILL NO. 150 (supplemental appro, ria- 150
tion, Department of Education; effective date), namely,
HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 150 (appropriations to Department of Educa-
tion; effective date), and respectfully requests the House
to recede from its amendment.

In the event that the House does not recede, the President has appointed the following members to a Conference Committee to meet with a like Committee from the House to consider the above bills:

Senator Hackney, Chairman
Senator Ferguson
Senator Oraini

A message dated May 24, 1977 was read stating the Senate HCS
has adopted the Free Conference Committee report on COM- CSSB
MITTEE SUBSTITUTE FOR SENATE BILL NO. 238 amended and 238
HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 238 (oil and gas properties production
tax; effective date) thus adopting

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 238
(oil and gas taxation; effective date)

1

Justice Jay A. Rabinowitz
Supreme Court
Box 850
Fairbanks, Alaska 99707

REC'D
14 FEB 86
FROM
DAVE STESSING, ATTY.
Box 1771
Homer 99603

Sept. 12, 1985
Halibut Cove

Dear Jay:

I am writing in regard to Case 3HO-84-276 SC.

I feel the Lower Courts have brought in a verdict on the above case that is not in conformance with actual Law.

As the first Bill I worked on as a Freshman Legislator in 1963 was the Open Range issue I introduced legislation repealing the Estray Act as it had been used to impound horses running at large in the Sterling area; it at that time not being included in a Controlled Grazing District and we didn't want a law on the Books that in any way put a burden on the livestock industry.

I was joined in my open range argument by Jacob Stalker, the reindeer herder from the Seward Peninsula, who had a fear that small tract owners up north would impound deer to get free meat and by Art Harris who had a large ranch in the Aleutians and was afraid the small land owners could use impoundment as a hassement tool.

At the time on the House floor argument was made by those who opposed the Act that if Alaska remained truly Open Range then the law would not only effect the private property owners in areas that did not have a Controlled Grazing District but in the absence of highway regulation motorists as well..in other words if you were to hit an animal in an Open Range area the motorist paid for the animal and in areas closed to Open Range the owner of the animal pays the cost.

Some years later the cattlemen were faced with a fence law that made fencing an area once included in a Controlled Grazing district very expensive so I did what was necessary to repeal the fence law.

Dr. Honsinger, the State Veteranian, asked why I hadn't just modified the fence law but the reasoning at that time was if the people formed a controlled grazing district the live stock owners job was to keep his stock confined and to dictate the kind of fence that was necessary.

Again a few years later then Representative Leo Rhode came to my office on the Senate side and asked if he modified the Controlled Grazing District Law to make it easier to form a Grazing District if I would allow the Bill through the Senate as times were changing. I raised no objection but I think you will find that Alaska is

predominately open range and for a court to award damages to a property owner outside a controlled area is more a case of a Judge writing Law than ruling on it.

The two remedies for a property owner outside a Controlled Grazing District still remain #1. form a Grazing District or #2. go back to the Legislature and change the Law.

Yours truly,

Clem V. Tillion

Clem V. Tillion

State of Alaska)
City of.....)

On this *14* day of *September* 19*55*, personally appeared before me *Clem V. Tillion*, who acknowledged to me that he signed and sealed the same as his free and voluntary act and deed.

Lucie A Chamberlain

.....
NOTARY PUBLIC in and for the State of Alaska, residing at

..... *6/29/56*
My Commission expires.....

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

April 18, 1986

SUBJECT: Controlled livestock districts
[CSHB 428(Resources)]

TO: Representative Andre Marrou

FROM: Richard A. Bradley
Legislative Counsel

Jack Sanderson has requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill amends AS 03.35.010, Creation and Restriction in Use of Controlled Livestock Districts.

Sec. 10(a) transfers from the district court to a borough assembly the power to establish a controlled livestock district; the section limits the power to establish the controlled livestock districts to the areas within a borough. The assembly will adopt a controlled livestock district by ordinance.

The phrase "or in other settled areas of the state" is deleted as inconsistent with the logic of the amendment.

The phrase "one or more townships or portions thereof or of" was deleted because it did not, in fact, establish a limitation; the only legislative limitation is the minimum size of "1,280 acres", an area one mile by two miles.

The phrase "herded on open public domain and" was deleted as essentially inconsistent with the logic of the description of a "controlled livestock district."

Section 2 of the bill adds Sec. 03.35.010(b). It provided that the area of a city of any class constitutes a controlled livestock district. Moreover, the area of any former city of any class within a unified municipality (i.e., Juneau, Sitka, Anchorage) constitutes a controlled livestock district. And the remainder of the state is "open public domain."

Section 3 of the bill amends AS 03.35.020(a). It changes from "60 percent of the resident owners and lessees of cultivated land within the area" to "10 resident owners or lessees of cultivated or improved land within the area" the number of those who are required to petition for the establishment of a controlled livestock district. As amended, sec. 10 would provide that the only areas in which a controlled livestock district may be established within a borough are the areas of the borough that are not within the limits of a city or former city of any class. The petition shall be filed with the borough clerk rather than the district judge.

Section 4 of the bill amends AS 03.35.020(c). The section permits a petition to abolish all or a portion of a controlled livestock district using the same procedures as for its establishment, that is, by ordinance.

Section 5 amends AS 03.35.030, Notice, Hearing, and Ordinance, and conforms the language of the section to the substantive changes already made.

Sec. 30(a) relates to the receipt of the petition and its notice by the borough assembly.

Sec. 30(b) permits the assembly, in its discretion, to establish the controlled livestock district. It directs the borough clerk to send a copy of the ordinance to the commissioner of natural resources.

Section 6 of the bill amends AS 03.35.040, Liability for Damages, and Lien.

Sec. 40(a) permits the owner of land within a controlled livestock district, "whether the land is fenced or

Representative Andre Marrou
Page 3
April 18, 1986

unfenced," to recover for "actual damages or injuries done or caused" in place of the existing law's "any injury done".

Sec. 40(b) provides that no claim may exceed "\$5,000" in place of the existing "\$50").

Section 7 of the bill amends AS 03.35.070, Definitions. Sec. 70(1) adds "cats and dogs" to the definition of "domestic animals".

Sec. 70(2) provides that "owner of land" means a person in actual possession of land and eliminates some extraneous examples.

The bill does not have an affirmative effective date section.

If I may be of further assistance, please advise.

RAB:mkr
m4/142

"May 25, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

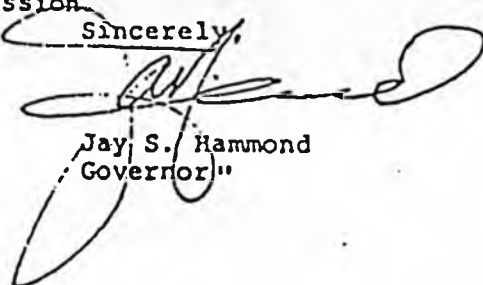
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Sincerely,



Jay S. Hammond
Governor

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am H

SENATE BILL NO. 197 amended House
(sale of subsistence salmon roe)
Chapter 56, SLA 1977

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game



Andre Marrou
Representative

District 5

| | |
|----------|--------------|
| Kenai | Sterling |
| Soldotna | Anchor Point |
| Homer | Port Graham |
| Seldovia | English Bay |
| Kachemak | Nikolaevsk |
| Kasilof | Halibut Cove |
| Nimlich | Clam Gulch |

April 21, 1986

To: Peter Goll, Chairman House Community & Regional Affairs Committee.
From: Andre Marrou, Representative

Subject: CSHB 428, Controlled Livestock Districts.

CSHB 428 proposes to change how controlled livestock grazing districts are established. Specifically, it:

°increases the number of people eligible to petition for a controlled livestock district by adding "improved land" (house and cabin owners) to "cultivated land" (farmers and ranchers);

°decreases the required number of signatures from 60% of "cultivated" land owners to only 10 owners of "improved or cultivated" land;

°provides that all cities constitute controlled livestock districts, thereby enlarging the area where persons are responsible for their animals;

°allows a borough assembly instead of a district judge, to establish a controlled livestock district after public hearings;

°clearly establishes that open range exists in Alaska outside controlled livestock districts;

°raises the maximum liability of livestock owners within a district from \$50 to \$5000.

A recent court decision stated that the issue of open vs. closed range should be clarified by the Legislature. This bill will solve many of the problems that have arisen.

This bill is a cooperative effort with Rep. Dave Thompson and should receive favorable action in the Senate if we can pass it to them.

Thanks in advance for your consideration.

Attachments:

fiscal note
sectional analysis

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game



Andre Marrou
Representative

District 5

| | |
|-----------|--------------|
| Kenai | Sterling |
| Soldotna | Anchor Point |
| Homer | Port Graham |
| Seldovia | English Bay |
| Kachemak | Nikolaevsk |
| Kasilof | Halibut Cove |
| Ninilchik | Clam Gulch |

April 11, 1986

To: Peter Goll, Chairman & Members of the H. C&RA Committee
From: Andre Marrou, Representative *AM*

Subject: CSHB 428 (Res), Controlled Grazing Districts

Public feelings on this issue are very strong. On the one side, there are small private landowners upset about cattle and horses grazing on their land, and in some cases their gardens and lawns, without accountability to the livestock owners. On the other hand, there are farmers and ranchers whose very livelihood depends upon access to open range, which they have had for decades upon decades here in Alaska.

As a case in point, ranchers are adamant that they need open range in the Fox River Valley at the head of Kachemak Bay, comprising thousands of acres. On the other hand, there have been abuses of the system.

Mr. O'Meara, in his law suit against the Andersons, claims that the courts have agreed with him that open range is a "myth" in Alaska. As I have advised Mr. O'Meara, I disagree with him and feel that the courts clearly said that the situation is now muddled and should be clarified by the Legislature. I pointed out to Mr. O'Meara that two former Governors, two former Senators, and one incumbent Senator, all have pointed out that open range has been a fact of life in Alaska for decades.

However, times change as more people move into an area, and laws need to be adjusted to current situations. CSHB 428 is offered as a partial solution-- a compromise. Please refer to the "Sectional Analysis."

Consider what a rancher would feel if he or she were suddenly required to build miles upon miles of fences around a state lease which he or she has been using for 20, 30, or 40 years. I daresay no rancher in the State could afford to do it. For example, there are now 39 grazing leases on State land, totaling 215,750 acres or about 5,532 acres per lease. Some ranchers have been using these grazing leases for 40 years. Which makes more sense-- asking a relative newcomer to fence in 1 acre, or suddenly requiring ranchers to fence in 5,500 acres (about 8½ square miles) that they've been using for a very long time?

Page 2
House C&RA, CSHB 428
April 28, 1986

Even another alternative is to allow ranchers to buy the grazing leases that they've been using for decades, and then require them to fence it in. This was part of the reasoning behind HB 248 last year regarding University-grant land--allow the farmer/rancher to own the land.

Also, please note that the five letters and affidavits from previous legislators and governors included two from original delegates to the Alaska Constitutional Convention in 1955-56. I included them because of the historical perspective, which I am not able to provide. One of the Constitutional Conventional delegates is current Sen. Jack Coghill. These delegates knew what they meant when they wrote the original Constitution of the State of Alaska, and therefore can provide a unique view of how Alaska has progressed during the last 30 years. Alaska has only had 5 Governors, including the current one, and 2 of these went to the trouble of recently addressing letters to the Alaska Supreme Court in support of open range.

CSHB 428(Res) incorporates most of the features of HB 385 and is supported by the latter's sponsor (Rep. Dave Thompson)

Walter J. Hickel

Box 101700
Anchorage, Alaska 99510-1700
907-270-7400

September 20, 1985

Justice Jay A. Rabinowitz
Supreme Court
Box 850
Fairbanks, AK 99707

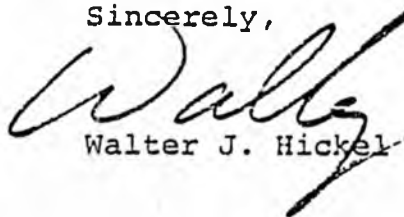
Dear Justice Rabinowitz:

I am writing to you in the hopes that the Supreme Court might hear a case that could have long-range implications for the State of Alaska, specifically Case Number 3H0-84-276 SC.

Attorney David G. Stebing has brought this matter to my attention and, while the statutes are clear and I am very much aware of them as they relate to Alaska's historical open-range, it is my feeling that this whole situation should be adjudicated.

Thank you for your consideration of this matter.

Sincerely,



Walter J. Hickel

bcc: David G. Stebing

IN THE SUPREME COURT FOR THE STATE OF ALASKA

AT ANCHORAGE

ELTON ANDERSON and EDNA)
ANDERSON,)
)
Petitioners,)
)
vs.)
)
MICHAEL s. O'NEARA and)
JANET V. O'NEARA,)
)
Respondents.)

Case No. 3HO-84-276 SC

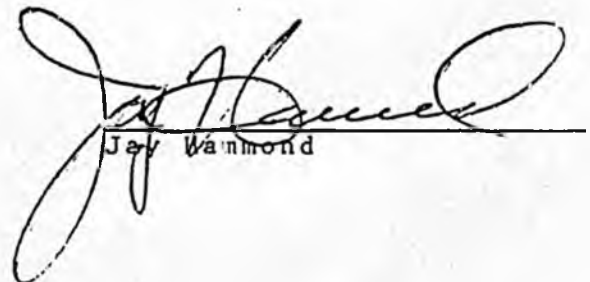
AFFIDAVIT OF JAY HAMMOND

Jay Hammond states as follows:

1. I am a former Governor of the State of Alaska.
2. I recall drafting the attached letter dated May 25, 1977 in which I expressed my concern about the impact that repeal of the fence-out law would have on liability on open range land.
3. It was then, and continues to be my opinion that the "open-range" rule of liability has long applied in Alaska concerning trespass by cattle on unenclosed property not located within the closed grazing district. I believe the trial court in case no. 3HO-84-276 SC erred insofar as it failed to acknowledge the existence of the open-range rule of liability as it has existed in Alaska.

DATED THIS 22nd day of September, 1985.

I, Jay Hammond, represent that there is no notary available in the Lake Clark area where I live, and that I have executed this document. I would sign this document under oath if a notary were available.


Jay Hammond

IN THE SUPREME COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

ELTON ANDERSON and EDNA)
ANDERSON,)
)
Petitioners,)
)
vs.)
)
MICHAEL s. O'MEARA and)
JANET V. O'MEARA,)
)
Respondents.)

RECEIVED
9/20/85 Smeley

Case No. 3HO-84-276 SC

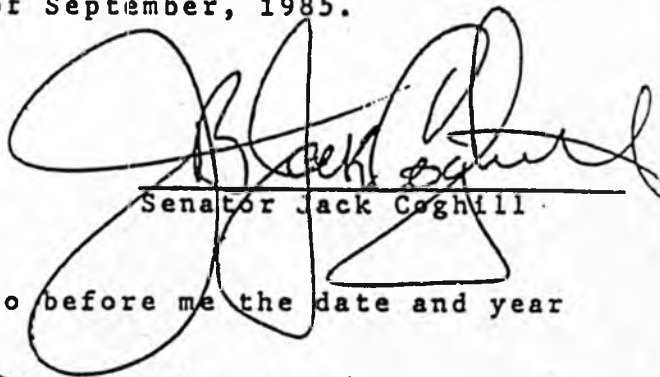
AFFIDAVIT OF JACK COGHILL

Jack Coghill being duly sworn and under oath, states as follows:

1. I was a delegate to the Alaska Constitutional Convention, a member of the territorial legislature, and am presently a Senator in the Alaska Legislature.
2. I am aware that the fence-out law previously codified at Alaska Stat. §03.30.010 et seq. was repealed in 1977. It is my belief that with the repeal of the fence-out law the "open range" rule of liability applies in situations involving trespass by cattle.
3. In 1957 as a member of the territorial legislature, I assisted in the codification of the original fence-out law. At that time it was my understanding that the "open range" rule of liability had previously been followed in Alaska.
4. I am of the opinion that the 1977 repeal of the fence-out law may have been an oversight insofar as it is determined that the act did away with open range.
5. In the last legislative session, I introduced a bill to effectively reinstate the fence-out law. That bill never made it out of committee.


DAVID G. STEBING
Attorney at Law
P. O. BOX 1771
HOMER, ALASKA 99603
PHONE: (907) 235-6246

DATED THIS 18 day of September, 1985.


Senator Jack Coghill

SUBSCRIBED and SWORN to before me the date and year
last above written.




Notary Public for Alaska
My Commission Expires:

IN THE SUPREME COURT FOR THE STATE OF ALASKA

AT ANCHORAGE

ELTON ANDERSON and EDNA)
ANDERSON,)
)
Petitioners,)
)
vs.)
)
MICHAEL s. O'MEARA and)
JANET V. O'MEARA,)
)
Respondents.)

Case No. 3HC-84-276 SC

AFFIDAVIT OF YULE KILCHER

Yule Kilcher, being duly sworn and under oath, states as follows:

1. I was a delegate to the Alaska Constitutional Convention in 1955-56, and was an Alaskan Senator from 1963-66.
2. I have raised cattle in the Kachemak Bay area from 1945 until the present, and was a co-founder of the Fox River Valley Cattlemen's Association which was founded in the early 1950s.
3. The Fox River Valley Cattlemen's Association accepted the Open Range concept as a fundamental precept in the Alaska cattle industry.
4. While a member of the Alaska Senate, I drafted and introduced the Little Taylor Grazing Act and the Farmers' Preference Act. Both of these pieces of legislation were enacted into law. Both of these laws favored ranching. The concept of "Open Range" was discussed and acknowledged by state legislators at the time as an old-standing rule of liability for Alaska.
5. The Open Range concept was in fact the foundation and starting point for all legislation in Alaska favoring ranching.

I believe the failure of the Alaska judicial system to recognize the Open Range rule of liability as it has existed

in Alaska for decades will result in numerous family-run cattle ranching operations going out of business because of the inability of these individuals to fence vast acreages of grazing land in order to avoid liability for trespass by their cattle.

DATED this 16th day of September, 1985.

Yule Kilcher
Yule Kilcher

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

SUBSCRIBED AND SWORN to before me this 16th day of September, 1985.

David G. Stebing
Notary Public for Alaska
My commission expires: 5/2/88

State of Alaska
NOTARY PUBLIC
DAVID G. STEBING
My Commission Expires

HOUSE
COMMITTEE REPORT

(7)
Date referred: 3/12/86
(Referral reversed 3/12/86)

FURTHER REFERRALS: C & RA

DATE: 4/21/86

The RESOURCES Committee has considered HB 428

"An Act relating to grazing districts."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS for HB 428 (Resources) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Shultz Dick Shultz

Miller (NP) W. Miller

Thompson W. Thompson

Jenkins Paul Jenkins

Cato W. Cato

John Sund

Dick Shultz
Co-Chairman Shultz

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-7332



April 10, 1986

MEMORANDUM

TO: Representative Shultz

FROM: Senator Coghill

RE: HB 428

A large, stylized handwritten signature in black ink, which appears to be 'JBC', is written over the 'FROM' line and extends across the 'TO' line.

I am supporting HB 428 as introduced by Representative Marrou. This bill addresses a problem that we are facing as urban development grows and the conflicts over grazing uses increases.

We have always had the concept of open range in Alaska. As a member of the Alaska Constitutional Convention I have a historical perspective to add on the concept of open range within the state. Attached you will find an affidavit that I signed in September of 1985.

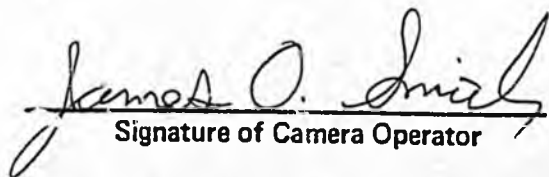
cc Representative Marrou

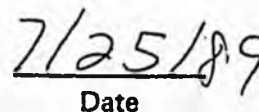


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date